IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/08/2002

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.A. No.1142 OF 1996

Gordon Woodroffe Limited
rep. by its Managing Director
Chennai-1 :: Appellant

-Vs-

1. Union of India, rep.
by the Secretary
Government of India
Ministry of Finance
New Delhi-1

2. The Chairman
Central Board of Excise & Customs
New Delhi-1

3. Commissioner of Drawback
Ministry of Finance
Department of Revenue
New Delhi

4. Collector of Customs
Chennai-1 :: Respondents

Writ Appeal under Clause 15 of the Letters Patent
against the order of the learned single Judge
dated 11-10-1996 in W.P. No.11750 of 1991

!For Appellant :: Mr. Yasod Vardhan

^For Respondents :: Mr. Balaji for
Mr. Madanagopala Rao,
Sr. C. G.S.C.
:JUDGMENT

V.S. SIRPURKAR, J.

This writ appeal is directed against the order of the learned single Judge whereby the learned single dismissed the writ petition filed by the appellant herein.

2. Appellant is a registered company engaged in the field of export of finished leather. The appellant had taken the benefits of the ' Drawback' scheme (in short 'the scheme')floated by the Central Government under the provisions of the Indian Customs Act (in short 'the Act'). The scheme was introduced in the year 1971 and for that purpose rules were framed, known as Customs and Central Excise Duties Drawback Rules, 1971 (in short 'the Rules'). Under the scheme, there was a provision for refund of excise and customs duties levied on materials used in the manufacture of the goods which are exported. There were two kinds of drawbacks contemplated in the scheme. The first was All Industry Rate, otherwise known as General Drawback, under which the exporters were paid drawback on the raw materials used in the manufacture of the exported goods. Under the second category, viz. Brand Rate Drawback, the drawbacks were allowed against particular branded items and the percentage of the drawback would be higher. These drawbacks used to be fixed every year by the Central Government.

3. The appellant, by application dated 5-10-1981, applied for fixation of Brand Rate Drawback on the goods exported by it during the period between 1-6-1979 and 31-5-1982. Similarly, the appellant, by its applications dated 26-7-1982, 20-8-1983 and 18-7-1984, applied for fixation of Brand Rate Drawback for the goods exported from 1-6-1 982 to 31-5-1983, 1-6-1983 to 31-5-1984 and 1-6-1984 to 31-5-1985 respectively. The drawbacks were granted at the enhanced percentage and the request of the appellant was also granted for supplementary claim of the drawback for the period 1979-85.

4. In February, 1986, verification was done in the matters of drawbacks and the exports by the Enforcement Wing of the Collector of Customs and the Collector of Customs, fourth respondent herein, informed the Finished Leather Manufacturers and Exporters Association that excess claims had been made and re-verification was liable to be conducted by the Directorate of Revenue Intelligence (DRI).

5. On 8-4-1987, DRI seized the appellant's records and commenced fresh verification to know as to whether the drawbacks were claimed correctly and in keeping with the actual exports. On 9-2-1988, the Under-Secretary passed an order that the brand rate granted to the appellant for the period 1-6-1979 to 31-5-1982 stood withdrawn as the application by the appellant for grant of such rate did not reflect the actual consumption and that the appellant had conceded to some irregularities. On 9-2-1988, brand rates fixed for the periods 1-6-1982 to 31-5-1983 and 1-6-1983 to 31-5-1985 were also stood withdrawn. The appellant, therefore, sent a letter to the respondent pointing out that it had never conceded to any irregularities and as such the withdrawals of the drawbacks were not in keeping with rules. On the basis of all this, the DRI sought to recover from the appellant a sum of Rs.28,10,149.35 which was sought to be recovered by letters dated 24-2-1988

and 27-2-1988. The appellant did not do anything but kept on making representations and there is one such representation pleaded by the appellant dated 27-3-1990. The appellant had also appeared before the Commissioner of Drawback, third respondent herein, on 23-11-199 0. However, on 18-12-1990 the final order came to be passed confirming the drawbacks ordered. It was expressed that the re-verification report had also justified the withdrawal of the drawbacks. The appellant, therefore, came up before this Court vide W.P. No.11750 of 1991 and prayed for the quashing of the communication dated 18-12-1990 bearing F.No.601/2101/40/86-DBK(PT). The appellant had also sought for the quashing of the communications issued by the first respondent dated 9-2-1988 in F.No.601/2101/40/85/DBK, F.No.601/2101/40/82-85 DBK and F.No.601/2101/40/85-DBK. The appellant had also sought a Mandamus to release the total amount of drawback of Rs.28,10,140/- recovered from it in respect of the goods exported for the period 1-6-1979 to 3 1-5-1985.

6. In the writ petition to begin with, it was pointed out that the petitioner was not supplied with the re-verification report drawn by D.R.I., which was the basic document for the action taken against the petitioner. It was also pleaded that the petitioner was not granted any opportunity of being heard before the withdrawal of the drawbacks fixed for the finished leather goods exported by the petitioner and that there was a violation of principles of natural justice. It was also suggested that the impugned orders dated 9-2-1988 were made on the basis of the information received that a number of finished leather exporters had obtained brand rate by inflating and misrepresenting the consumption pattern and the duties paid on the inputs while the petitioner had never inflated or misrepresented the consumption of the materials and the duties paid thereon. It was reiterated by the petitioner that it had never conceded the irregularities as was suggested in the orders dated 9-2-1988. A complaint was made that the reverification report, which was the basic document was submitted before the authorities only after the orders invoking the drawbacks were passed and thus could not be relied upon by the respondents. Thus, there was no basis for the impugned orders. Lastly it was contended that the full drawbacks could not have been withdrawn as the petitioner had actually paid the duties to the tune of Rs.18,60,018.77 which was evidenced by proper documents. On all these counts, the orders dated 18-12-1990 passed by the third respondent and the other orders dated 9-2-1988 passed by the first respondent were thus assailed.

7. By filing the counter-affidavits, the respondents had justified the action taken against the petitioner and had pleaded that widespread irregularities were found particularly in respect of the finished leather exporters who had not furnished correct details in regard to the consumption of inputs and the data regarding the consumption of inputs was inflated with the sole purpose of claiming excessive drawbacks and, therefore, the matter was investigated and on the basis of the report received from the Assistant Director, D.R.I., through the Collector of Customs, the three brand rate letters granted to the petitioner were withdrawn. The Department, pointed out that consumption of chemicals, as per the bill of materials used, appeared to have been worked out on the basis of unit area of leather of 1000 sq.ft. However, no documentary evidence was produced to prove this pattern of consumption. It was pointed out that no records were produced to show how

much raw materials had been used for finished leather exclusively meant for export and for domestic consumption. It was pointed out that there were different varieties of leathers and as such different patterns of consumption depending upon the size, thickness, quality, etc. There was no evidence regarding the consumption of the raw materials for these different patterns. The details regarding the consumption of raw materials were sought to be checked vide stock card/ bin card. However, the exporters had failed to produce the said documents for proving the actual consumption of the raw materials.

8. It was also pointed out that the petitioners had used a chemical called 'Wattle Extract' in their manufacturing process. The said chemical was imported as also procured indigenously. It was contended that the consumption of the imported chemical was not proved with the documentary evidence. It was pointed out that the exporters did not maintain separate records for the use of imported inputs in respect of the exported goods and, therefore, their claims were not acceptable. It was pointed out that they were not able to show that the imported chemicals were actually used in the export products and considering that the major portion of the drawback claimed was in respect of the imported chemicals alone, the claims which were unsubstantiated, were rejected. It was also pointed out that the amount of import duty was actually inflated. A table was given by the Department in their counter to substantiate this. It was also pointed out that the discrepancy/shortcomings detected by the investigating agency were shown to the petitioner and the petitioner had endorsed having seen the same and the answers sent by the petitioner were also in general terms and not in specific terms. It was also pointed out that the petitioner had not produced the documents (GP-1) in support of the duty paid and it was found that the claim was made on notional basis on the ground that the chemicals were purchased from the open market. The Department also pointed out that DBK-1, DBK-2 and DBK-3 statements were also defective as they were based on the number of pieces and not on the total area of leather. Thus, according to the respondents, the petitioner had obtained more amount of drawbacks by inflating the details regarding the consumption of raw materials, chemicals, etc.

9. This Court finding that the re-verification report, which came into existence after the drawbacks were ordered to be withdrawn, directed the department to serve the re-verification report on the petitioner after which, a supplemental affidavit came to be filed by the petitioner reiterating therein that the full report was not made available. The supplementary affidavit was almost in the nature of a fresh petition. It was complained that Appendices A, B and C and Annexures 1 to 9 appended to the report were not furnished and the petitioner was not in a position to furnish a detailed reply regarding the alleged shortcomings contained in the said annexures to the report. It was pointed out that this report was not furnished at the time of hearing and before 18-12-1990 when the impugned order was passed by the third respondent. The appellant, by its supplementary affidavit tried to meet all the objections raised and the defects pointed out in that re-verification report on merits also.

10. The learned single Judge took stock of all the initial

allegations and pleadings made in the writ petition as also the points raised by way of the supplementary affidavit and came to the conclusion that the drawbacks were justifiably withdrawn. In paragraph 11, the learned single Judge found that the objection raised by the petitioner that the appendices A, B and C and the annexures 1 to 9 were not supplied with the report was not a valid objection as the petitioner had endorsed its entires in the annexures 4 and 6 in respect of the discrepancies noticed by the respondents. The learned single Judge held that it could not be held that the petitioner had no notice of the appendices and annexures as the petitioner was given the opportunity to peruse the re-verification report and filed their objections thereto. The learned single Judge held that the principles of natural justice could not be extended in a mechanical manner. The learned single Judge observes:
"I am satisfied on the basis of the averments in the counter affidavit and the re-verification report especially the Annexures 4 to 6 that the respondents had taken pains to verify the correctness of the claim of the petitioners for the grant of brand rate of drawback. Here again, it has to be remembered that under Rule 3 of Drawback Rules, All Industry Rate of drawback had been allowed to the petitioners. It is only the subject claim of brand rate under Rule 7 of the Drawback Rules, which is now withdrawn." Recording this finding, the learned single Judge dismissed the writ petition, necessitating the present appeal.

11. Learned counsel for the appellant, Mr. Yasodh Vardhan very seriously contended that in this case right from the beginning the department proceeded on the incorrect factual data and there was abuse of natural justice even during the enquiry. He pointed out that the appellant had never conceded any irregularity and yet in the very beginning the authorities came to pass the order suggesting that such concession was made. The further argument of the learned counsel is that at any rate the appellant suffered a prejudice on account of the fact that a report, which was made subsequent to the impugned order and which was very heavily relied upon by the respondents, was never supplied to the appellant and when it was directed to be so supplied, a complete report was not given and thereby the appellant suffered a prejudice. Even on merits, the learned counsel tried to suggest that the inferences drawn to the effect that the appellant had not given the correct figures of exports was incorrect and in fact there was no occasion for the appellant to mislead the department in any manner and even the figures given by the department were incorrect. Lastly, it was contended that the total withdrawal of the whole drawbacks was unjustified even on facts.

12. As against this, learned counsel appearing for the Central Government heavily relied on the judgment of the learned single Judge as also the impugned orders by the department and pointed out that the department was more than fair in this matter because the opportunity was given at every stage by the department and there could be no scope to say that the principles of natural justice were trampled in this enquiry.

13. Considering the rival submissions, it has to be observed that it was the appellant's case that the basic document in this case was the 'Re-verification Report'. Though it was tried to be canvassed haltingly that this re-verification report came only subsequently, i.e. after the impugned

orders were passed, it was not disputed by the learned counsel for the appellant that this re-verification report would be extremely important because a thorough exercise was made by the department by re-verifying the accounts as also the documents of the appellant. Now, in fact, once the authorities had already passed the orders and withdrawn the drawbacks by their impugned order dated 9-2-1988, there was hardly any reason for doing the whole exercise of re-verification of every account. However, the department did take up an arduous task of re-verification. We cannot forget the background on which these exercises were taken. There were widespread complaints about the exporters in the leather industries inflating their duties and thereby making illegal gains. It was for this purpose that the whole exercise was taken up. There cannot be a complaint in this case that there was no enough checking because the re-verification report clearly suggests that the documents of the appellant were thoroughly checked individually by the concerned authorities. Again it cannot be forgotten that in the re-verification report itself the annexures and more particularly annexures 4 to 6 do show that those entries had been pointed out to the appellant who could not controvert the same. It is, therefore, obvious that if there was any injustice against the appellant by not furnishing it the subsequent document like the re-verification report, that was taken care of by the learned single Judge by directing its copy to be supplied to the appellant. Now, in fact, no fault could be found with the department because on the basis of its earlier inspection, the decision to withdraw the drawbacks was already taken and what was done by way of re-verification was only the exercise to get assured that the action taken was right. Therefore, the non-supply of the re-verification report by itself would be of no consequence. Again, it cannot be forgotten that even after the supply of the re-verification report as per the directions of the learned single Judge, the appellant did not offer to go before the authorities on that basis but instead chose to file an additional affidavit almost in the nature of a new petition, raising objections to each points serially. We find that the learned Judge, in paragraph 12 of his judgment, has taken into consideration the reply affidavit on its merits.

14. In paragraph 12 of his judgment, the learned single Judge took the stock of the reply affidavit on its merits and found that the respondent had correctly observed that there was no proof to show that the percentage of imported Wattle Extract used or inputs used for finished leather which was actually exported. The explanation offered by the petitioner that the separate accounts could not be maintained because of the peculiar nature of the trade was rejected by the learned single Judge. In paragraph 13 of his judgment, the learned single Judge pointed out that the essential principle of allowing the drawback was for encouragement of the exports and, therefore, in respect of the goods imported which were exclusively used for the production of the goods meant for export, the Government of India wanted to give a concession by returning a percentage of the import duty levied on the imported items. The learned single Judge, therefore, observes that the authorities were entitled to look for the proper proof to grant the concession. The learned single Judge also recorded a finding that when there was no proof to show the sufferance of import duty, there could be no question of any grievance on the part of the petitioner because any way, they had to pay the import duty; the question was only of the drawback claimed and the concessions

given in the duty. If there was no proof of the duty having been suffered by the petitioner, there was no question of any concession thereupon.

15. In our view, the learned single Judge has not committed any error in recording his findings. In fact, there appears to be a thorough exercise on the part of the learned single Judge in examining all the issues on facts and on merits which, in our opinion, was unnecessary. Under Art.226 of the Constitution there could be no question of examining the findings on facts and recording independent finding as to how much duty was suffered by the appellant and whether the authorities were justified to withdraw the drawbacks on the ground that the duties were inflated. The learned single Judge, in our opinion, has correctly gone into the re-verification report and found that the respondents had taken pains to verify the correctness of the claim of the appellant for the grant of drawbacks on the basis of brand rate. The learned single Judge also was alive to the limitations under Art.226 but, in our opinion, the learned single Judge has taken a thorough exercise to examine the issues in a detailed manner. In his judgment, the learned single Judge has recorded a satisfaction of the enquiry made and even from the records, we find that time and again the representatives of the appellant were heard and were given free hand to voice their grievances before the authorities. There is sizeable correspondence on records. We agree with the learned single Judge that in a petition under Art.226, it may not be possible to go into the minute details regarding the entries and the re-verification report will have to be given its credence. We also do not accept the contention raised by Mr. Yasodh Vardhan that the appellant had not conceded to any irregularities. There are clear endorsements made on some entries and was also found by the learned single Judge. We are not impressed by the argument of Mr. Yasodh Vardhan that only a truncated report came to be given and that caused prejudice to the appellant. We cannot forget the fact that the appellant had not only accepted the report but also gave a detailed reply thereto and took an opportunity to argue the whole matter threadbare before the learned single Judge. Under such circumstances, we are of the clear opinion that the judgment of the learned single Judge cannot be interfered with and the writ appeal has absolutely no merits.

16. Learned counsel for the appellant very heavily relied on the reported decision in JT 1997 (6) SC 1 (M.A. Jackson v. Collector of Customs) and pointed out that the Apex Court had scoffed at the nonsupply of some documents. We find from the decision that the factual situation is completely different. In paragraph 8, the Apex Court found that since the magazine was not made available to the petitioner, it caused prejudice. In fact, there the situation was entirely different on facts. We do not think that the reported decision would be of any help to the appellant herein particularly because we are of the clear opinion that no prejudice has been caused by the non-supply of the re-verification report because the said report has come into being only after the impugned action is taken against the appellant. It is only a subsequent exercise taken by the authorities.

17. In short, the writ appeal has no merits and it is dismissed but without any orders as to the costs.

Index:Yes
Website:Yes (V.S.S., J.)(F.M.I.K., J.)
Jai 22-08-2002

1. Secretary to Government
Ministry of Finance
Government of India
New Delhi-1

2. The Chairman
Central Board of Excise & Customs
New Delhi-1

3. Commissioner of Drawback
Ministry of Finance
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W.A. No.1142 of 1996